

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री जगदीश, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.602/Chny/2025
निर्धारणवर्ष/Assessment Year: 2017-18

M/s. Ashok Leyland Ltd., No.1, Sardar Patel Road, Guindy, Chennai-600 032.	v.	The DCIT, Corporate Circle-1(1), Chennai.
[PAN: AAACA 4651 L]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr.R. Vijayaraghavan, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Mr.A.T. Krishnamoorthy, JCIT
सुनवाईकीतारीख/Date of Hearing	:	25.06.2025
घोषणाकीतारीख /Date of Pronouncement	:	29.07.2025

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter referred to as 'Ld.CIT(A)'), Delhi, dated 03.01.2025 for the Assessment Year (hereinafter referred to as 'AY') 2017-18.

2. The assessee in the grounds taken in the appeal is noted to have objected to the legal validity of the assessment order dated 30.03.2022 and also the merits of the addition(s)/disallowance(s) made therein. At



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the outset, the Ld.AR of the assessee first drew our attention to Ground No.2 wherein the assessee has raised the following legal issue which reads as under:

2. Order passed in the name of non-existing entity is invalid in the eyes of law

2.1. The CIT(A) erred by failing to consider the Appellant's objections that reassessment proceedings initiated in the name of non-existing entity are void ab initio.

2.2. The CIT(A) erred in relying on the decision of the Supreme Court in the case of PCIT(Central) Vs Mahagun Realtors P Ltd [2022 SCC Online SC 407] while deciding on the validity of an order passed in the name of a non-existing entity, without appreciating that the facts in the case of M/s. Mahagun Realtors P Ltd (supra) dealt with willful suppression of fact of amalgamation by the assessee and hence, is distinguishable from the facts of your Appellant's case.

2.3. The CIT(A) incorrectly ignored Appellant's reliance to decision of the Apex Court in Pr. CIT v. Maruti Suzuki India Ltd. [2019] 416 ITR 613 (SC) and decision of the Delhi High Court in the case of Spice Entertainment v. CIT in 2012 (280) ELT 43 (Delhi) which have upheld the principle that notice issued in the name of amalgamating entity is invalid and therefore any proceedings taken against such notice would be void ab initio.

3. Since the legal issue raised in the above ground, especially that notice(s) u/s 148 & 143(2) was issued and that the impugned assessment order was passed in the name of non-existing entity, goes to the very root of the validity of the re-assessment order, therefore, the same is being taken up first.

4. The relevant facts of the case are that, M/s. Ashok Leyland Vehicles Ltd., (hereinafter referred to as 'M/s.ALVL') a limited company incorporated under the Companies Act, 1956 was engaged in the business of producing, manufacturing and assembling light commercial vehicles. For AY 2017-18, ALWL had filed its return of income electronically on



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31.10.2017 claiming a loss of Rs.29,85,24,786/-. The case of ALWL was selected for scrutiny and the original assessment was completed vide order dated 18.12.2019 u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). In the meanwhile, ALWL stood amalgamated with the assessee, M/s Ashok Leyland Ltd [in short 'ALL'] vide a Scheme of Arrangement approved by the NCLT, Chennai dated 17.12.2018. It is noticed that, the assessee had intimated the Assessing Officer regarding the scheme of amalgamation vide letter dated 31.12.2018 in which it was stated that, ALWL stood merged with ALL with effect from 01.04.2018 and consequent to the amalgamation, ALWL ceased to exist and accordingly requested the AO to take note of the same. In spite being intimated regarding the amalgamation of ALWL and the fact that, it had ceased to exist, the AO is noted to have issued notice u/s 148 of the Act on 25.03.2021 seeking to reopen the concluded assessment for AY 2017-18 in the name of non-existent company, ALWL. The Ld. AR brought to our attention that, the assessee vide letter dated 23.04.2021 had objected to the validity of the notice which was issued in the name of non-existent entity, ALWL and also informed the AO that, this fact had already been intimated to him on 31.12.2018. Without prejudice to their legal objection, the assessee is noted to have filed the return of income in response to the notice u/s 148 of the Act on the same date.



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5. In spite of the above intimation, it was brought to our attention that, the notice u/s 143(2) of the Act dated 28.07.2021 was again issued in the name of the erstwhile company, ALWL along with which the reasons recorded for reopening the assessment were provided by the AO. Taking us through a series of communications, the Ld. AR showed us that, vide letters dated 18.08.2021, 03.09.2021, 29.09.2021 & 24.02.2022, the assessee had *inter alia* consistently objected to the validity of the notice(s) and the impugned reassessment proceedings which were being conducted in the name of non-existent entity, ALWL. It is noted that, the AO vide letter dated 14.03.2022 acknowledged that M/s.ALVL had amalgamated with M/s.Ashok Leyland Ltd., w.e.f. 01.04.2018, but he *inter alia* disposed off the legal objection raised by the assessee to the validity of the notice by observing that, mere service of notice in respect of a company which did not exist cannot be a ground to assail the proceedings instituted for reopening the assessment u/s 147 of the Act. According to him, the notices were acknowledged by the assessee and therefore it cannot be treated as invalid. The AO is noted to have referred to the decision of Hon'ble Madras High Court in the case of **Vama Sundari Investments (Delhi) Pvt Ltd Vs ACIT [2021] 128 taxmann.com 239** and **CIT Vs T V Sundaram Iyengar and Sons Pvt Ltd [1999] 238 ITR 328** to reject the legal plea raised by the assessee. Though having acknowledged the fact, in this letter dated 14.03.2022



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that, ALWL was no longer in existence as it stood merged with ALL with effect 01.04.2018, the AO is noted to have still framed the impugned reassessment order u/s 147/143(3) dated 30.03.2022 in the name of non-existent company, ALWL.

6. Before the Ld. CIT(A) the assessee is noted to have specifically raised this legal issue, who is noted to have dismissed the same by observing as under:-

“The claim of the Appellant that the order passed in the name of non-existing entity is invalid in the eyes of law has been duly considered. The Hon’ble Apex Court in the case of PCIT (Central) Vs Mahagun Realtors P Ltd [2022 SCC Online SC 407] upheld the validity of the assessment order. It has been clarified that an amalgamation does not necessarily invalidates an assessment order. The issue before the Apex Court was whether the assessment order was valid, given that the amalgamating company ceases exist in law after the amalgamation date. The Apex Court has upheld the validity of the assessment order.

Following the ratio laid down by the Hon’ble Apex Court, the ground 2 of the assessee is dismissed.”

7. We have heard both the parties and also perused the relevant documents placed before us. It is an admitted fact that, ALWL stood merged with ALL with effect from 01.04.2018 and the assessee brought this fact to the notice of the AO vide their letter dated 31.12.2018. The AO however had issued the reopening notice u/s 148 of the Act dated 25.03.2021 in the name of erstwhile company, “M/s. Ashok Leyland Vehicles Ltd” [ALWL] which was no longer in existence. The assessee is found to have again intimated the AO regarding this fact vide letter dated



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23.04.2021, but even the notice u/s 143(2) of the Act dated 28.07.2021 to assume jurisdiction was issued in the name of non-existent company. As noted above, though the AO later on in this communication dated 14.03.2022 had expressly acknowledged the fact that ALWL was no longer in existence and had ceased to exist, but he still framed the impugned assessment order dated 30.03.2022 in the name of erstwhile company, ALWL. Thus, it is seen that the Assessee had intimated the AO time and again that ALWL stood merged with the assessee with effect 01.04.2018 and was therefore no longer in existence, but despite several intimations, the AO not only issued the notice u/s 148 in the name of a non-existent entity, but also the jurisdictional notice u/s 143(2) as well as the impugned reassessment order was passed in the name of the non-existent company, ALWL.

8. It is by now well settled in law that, any notice or order issued in the name of non-existent entity which has since stood merged/ amalgamated / dissolved is *ab initio void* and bad in law. Once it is found that the notice assuming jurisdiction is issued in the name of a non-existent entity, then the assessment framed consequent thereto, is non-*est* in the eyes of law. As already noted above, the mandatory notice(s) to reopen the assessment u/s 148 of the Act, to scrutinize the assessment u/s. 143(2) of the Act and also the impugned assessment order was



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issued in the name of the already amalgamated company/non-existing entity [M/s ALWL]. Hence, we find that, the AO had usurped without jurisdiction to assess the non-existing entity [M/s. ALWL]. Consequently, the framing of assessment u/s. 147/143(3) of the Act, which was also in the name of non-existing entity [M/s ALWL], had been done without assuming valid jurisdiction and is thus null in the eyes of law. It is settled law that, the issuance of mandatory notice in the name of a non-existent entity is an incurable defect and cannot be treated as a procedural irregularity and section 292B of the Act cannot come to the rescue of revenue. Instead it is a jurisdictional defect which renders the proceedings/assessment non-est in the eyes of law. This legal proposition finds support in the judgments of the Hon'ble Supreme Court in the case of **CIT Vs Maruti Suzuki India Limited [416 ITR 613]** wherein the Hon'ble Apex Court, after taking cognizance of provisions of Section 292B & 170 of the Act, has unequivocally held that, an assessment being framed in the name of a non-existent entity is a fatal flaw which can neither be corrected nor rectified. For the sake of reference, the relevant findings are as under:-

"20. In Spice Entertainment, (supra) a Division Bench of the Delhi High Court dealt with the question as to whether an assessment in the name of a company which has been amalgamated and has been dissolved is null and void or, whether the framing of an assessment in the name of such company is merely a procedural defect which can be cured. The High Court held that upon a notice under Section 143 (2) being addressed, the amalgamated company had brought the fact of the



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amalgamation to the notice of the assessing officer. Despite this, the assessing officer did not substitute the name of the amalgamated company and proceeded to make an assessment in the name of a non-existent company which renders it void. This, in the view of the High Court, was not merely a procedural defect. Moreover, the participation by the amalgamated company would have no effect since there could be no estoppel against law :

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24. A batch of Civil Appeals was filed before this Court against the decisions of the Delhi High Court, the lead appeal being Spice Entertainment (supra). On 2 November 2017, a Bench of this Court consisting of Hon'ble Mr Justice Rohinton Fali Nariman and Hon'ble Mr Justice Sanjay Kishan Kaul dismissed the Civil Appeals and tagged Special Leave Petitions in terms of the following order :

"Delay condoned.

Heard the learned Senior Counsel appearing for the parties.

We do not find any reason to interfere with the impugned judgment(s) passed by the High Court.

In view of this, we find no merit in the appeals and special leave petitions.

Accordingly, the appeals and special leave petitions are dismissed."

25. The doctrine of merger results in the settled legal position that the judgment of the Delhi High Court stands affirmed by the above decision in the Civil Appeals.

It is of relevance to refer to Section 292B of the Income Tax Act which reads as follows:

"292B. No return of income, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act."



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In this case, the notice under Section 143(2) under which jurisdiction was assumed by the assessing officer was issued to a non-existent company. The assessment order was issued against the amalgamating company. This is a substantive illegality and not a procedural violation of the nature adverted to in Section 292B.

In this context, it is necessary to advert to the provisions of Section 170 which deal with succession to business otherwise than on death. Section 170 provides as follows:

"170. (1) Where a person carrying on any business or profession (such person hereinafter in this section being referred to as the predecessor) has been succeeded therein by any other person (hereinafter in this section referred to as the successor) who continues to carry on that business or profession,—

(a) the predecessor shall be assessed in respect of the income of the previous year in which the succession took place up to the date of succession;

(b) the successor shall be assessed in respect of the income of the previous year after the date of succession.

(2) Notwithstanding anything contained in sub-section (1), when the predecessor cannot be found, the assessment of the income of the previous year in which the succession took place up to the date of succession and of the previous year preceding that year shall be made on the successor in like manner and to the same extent as it would have been made on the predecessor, and all the provisions of this Act shall, so far as may be, apply accordingly.

(3) When any sum payable under this section in respect of the income of such business or profession for the previous year in which the succession took place up to the date of succession or for the previous year preceding that year, assessed on the predecessor, cannot be recovered from him, the Assessing Officer shall record a finding to that effect and the sum payable by the predecessor shall thereafter be payable by and recoverable from the successor and the successor shall be entitled to recover from the predecessor any sum so paid.

(4) Where any business or profession carried on by a Hindu undivided family is succeeded to, and simultaneously with the succession or after the succession there has been a partition of the joint family property between the members or groups of members, the tax due in respect of the income of the business or profession succeeded to, up to the date of succession, shall be assessed and recovered in the manner provided in



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section 171, but without prejudice to the provisions of this section. Explanation.—For the purposes of this section, "income" includes any gain accruing from the transfer, in any manner whatsoever, of the business or profession as a result of the succession"

33. In the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in Spice Entertainments (supra) on 2 November 2017. The decision in Spice Entertainments has been followed in the case of the respondent while dismissing the Special Leave Petition for AY 2011-2012. In doing so, this Court has relied on the decision in Spice Entertainments (supra)."

9. Before us Ld. DR relied upon the decisions of Hon'ble Madras High Court in the cases of **CIT Vs T V Sundaram Iyengar and Sons Pvt Ltd (supra)** & **Vama Sundari Investments (Delhi) (P.) Ltd. (supra)** and the Hon'ble Supreme Court in the case of **Pr. CIT v. Mahagun Realtors (P.) Ltd. (supra)**, which were cited by the lower authorities. We first take up the decision in the case of **CIT v. T V Sundaram Iyengar and Sons Pvt Ltd (supra)**. After going through the same, we find the same to be distinguishable on facts as it was not a case involving issuance of any jurisdictional notice or assessment order in the name of amalgamated company, despite intimation by the assessee. Rather, in that case, the amalgamating company resisted the enforcement of statutory liabilities which stood in the name of amalgamated company on the premise that it



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was no longer in existence. The Hon'ble High Court however observed that, pursuant to amalgamation, the amalgamating company took over all the assets & liabilities of the amalgamated company including the statutory liabilities and therefore it was held that the AO could enforce the demand(s) against the amalgamating company. Moreover, according to us, the later judgment of the Hon'ble Supreme Court on the *lis-in-hand* in the case of CIT Vs Maruti Suzuki India Ltd (*supra*) would prevail in the facts and circumstance of this case.

10. Coming to the decision of **Vama Sundari Investments (Delhi) (P.) Ltd. (supra)** rendered by Single Judge Bench of the Hon'ble Madras High Court, we find the said decision was rendered without taking cognizance of the judgment of the Hon'ble Supreme Court in the case of **CIT v. Maruti Suzuki India Ltd (supra)** and is therefore distinguishable. The Ld. AR also brought to our notice that, later on the Division Bench of the Hon'ble jurisdictional High Court in the case of **Pharmazell (India) (P.) Ltd. v. NFAC (supra)** has held otherwise and quashed the assessment order framed in the name of non-existent company.

11. As far the decision of **Pr. CIT v. Mahagun Realtors (P.) Ltd. (supra)** is concerned, we find that the said judgment of the Hon'ble Supreme Court is factually distinguishable because in that case no



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intimation was given to the AO and return was filed by the assessee pursuant to the notice issued by the AO suppressing the fact of amalgamation and at no point of time this fact was communicated to the income tax authority. The ratio laid down by the Hon'ble Supreme Court in the case of Maruti Suzuki and Mahagun Realtors Pvt. Ltd., is noted to have been discussed in detail by the Hon'ble jurisdictional Madras High Court in the case of **Pharmazell (India) (P.) Ltd. V. NFAC (supra)**, and the relevant findings are noted to be as under:-

"3. It may also be relevant to note that the factum of amalgamation of Pharmazell Vizag Pvt. Ltd. with Pharmazell (India) Pvt. Ltd. was intimated / disclosed to the respondent vide Email dated 09.10.2020 and letters / objections dated 28.12.2020 and 10.03.2021. Importantly, in the letters / objections dated 28.12.2020 and 10.03.2021 the reply was in the name of Pharmazell (India) Pvt. Ltd. and even in the subject the merger of Pharmazell Vizag Pvt. Ltd. with Pharmazell (India) Pvt. Ltd. was indicated. All these communications were made even prior to the draft assessment order being made. However, the Draft Assessment Order came to be passed on 30.03.2021, in the name of Pharmazell Vizag Pvt. Ltd. which ceased to exist by then, by virtue of the order of amalgamation. The impugned order of assessment thereafter was also made in the name of Pharmazell Vizag Pvt. Ltd. a non existing entity.

4. It was submitted that pursuant to the order of amalgamation any order that is made in the name of Pharmazell Vizag which is not in existence would be void, reliance was placed on the judgment of the Hon'ble Supreme Court in case of *Pr. CIT v. Maruti Suzuki India Ltd.* [2019] 107 taxmann.com 375/265 Taxman 515/416 ITR 613 and the Delhi High Court in the case of *Spice Entertainment Ltd. v. CIT* [2012] 247 CTR 500, which I shall refer to in the course of this judgment.

5. To the contrary, it was submitted by the learned counsel for the respondent that the petitioner had participated in the proceedings and thus estopped in raising this procedural / technical defect of the assessment having been made in the name of Pharmazell Vizag Pvt. Ltd.



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6. I find that the objection now raised by the learned counsel for the respondent stands rejected by the Division Bench of the Delhi High Court in the case of *Spice Entertainment Ltd. (supra)* which has been affirmed by the Supreme Court in the case of *Maruti Suzuki India Ltd. (supra)* the relevant portion is extracted hereunder :

....

7. Thereafter while dealing with the contention that a contrary view has been taken by the Delhi High Court in *Sky Light Hospitality LLP v. Asstt. CIT* [2018] 90 taxmann.com 413/254 Taxman 109/405 ITR 296 which is affirmed by a 2 Judge bench of the Apex Court, it was found that it does not in any manner dilute or water down the law laid down in *Spice Entertainment* and it was clarified that the law laid down in *Spice Entertainment* governs the field as would be evident from the following portions of the judgment :

"27. The submission however which has been urged on behalf of the Revenue is that a contrary position emerges from the decision of the Delhi High Court in *Sky Light Hospitality LLP (supra)* which was affirmed on 6 April 2018 by a two judge Bench of this Court consisting of Hon'ble Mr Justice A K Sikri and Hon'ble Mr Justice Ashok Bhushan 32 *Sky Light Hospitality LLP (supra)*. In assessing the merits of the above submission, it is necessary to extract the order dated 6 April 2018 of this Court:

"In the peculiar facts of this case, we are convinced that wrong name given in the notice was merely a clerical error which could be corrected under Section 292B of the Income Tax Act.

The special leave petition is dismissed.

Pending applications stand disposed of."

Now, it is evident from the above extract that it was in the peculiar facts of the case that this Court indicated its agreement that the wrong name given in the notice was merely a clerical error, capable of being corrected under Section 29.

28. The "peculiar facts" of *Sky Light Hospitality* emerge from the decision of the Delhi High Court *Sky Light Hospitality LLP (supra/Sky Light Hospitality, an LLP, (supra)* had taken over on 13 May 2016 and acquired the rights and liabilities of *Sky Light Hospitality Pvt. Ltd* upon conversion under the Limited Liability Partnership Act 200825, It Instituted writ proceedings for challenging a notice under Sections 147/148 of the Act 1961 dated 30 March 2017 for AY 2010-2011. The "reasons to believe" made a reference to a tax evasion report received



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from the investigation unit of the income tax department. The facts were ascertained by the investigation unit. The reasons to believe referred to the assessment order for AY 2013-2014 and the findings recorded in it. Though the notice under Sections 147/148 was issued in the name of Skylight Hospitality Pvt. Ltd. (which had ceased to exist upon conversion into an LLP), there was, as the Delhi High Court held "substantial and affirmative material and evidence on record" to show that the issuance of the notice in the name of the dissolved company was a mistake. The tax evasion report adverted to the conversion of the private limited company into an LLP. Moreover, the reasons to believe recorded by the assessing officer adverted to the approval of the Principal Commissioner. The PAN number of the LLP was also mentioned in some of the documents. The notice under Sections 147/148 was not in conformity with the reasons to believe and the approval of the Principal Commissioner. It was in this background that the Delhi High Court held that the case fell within the purview of Section 2928 for the following reasons:

"18. There was no doubt and debate that the notice was meant for the petitioner and no one else. Legal error and mistake was made in addressing the notice. Noticeably, the appellant having received the said notice, had filed without prejudice reply/letter dated 11.04.2017. They had objected to the notice being issued in the name of the Company, which had ceased to exist. However, the reading of the said letter indicates that they had understood and were aware, that the notice was for them. It was replied and dealt with by them. The fact that notice was addressed to M/s. Skylight Hospitality Pvt. Ltd., a company which had been dissolved, was an error and technical lapse on the part of the respondent. No prejudice was caused."

29. From a reading of the order of this Court dated 6 April 2018 in the Special Leave Petition filed by Skylight Hospitality LLP (*supra*) against the judgment of the Delhi High Court rejecting its challenge, it is evident that the peculiar facts of the case weighed with this Court in coming to this conclusion that there was only a clerical mistake within the meaning of Section 2928. The decision in Skylight Hospitality LLP (*supra*) has been distinguished by the Delhi, Gujarat and Madras High Courts in:

....

30. There is no conflict between the decisions of this Court in Spice Entertainment (*supra*) and in Skylight Hospitality LLP (*supra*) "

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33. In the present case, despite the fact that the assessing officer was informed of the amalgamating company having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued only in its name. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. Participation in the proceedings by the appellant in the circumstances cannot operate as an estoppel against law. This position now holds the field in view of the judgment of a co-ordinate Bench of two learned judges which dismissed the appeal of the Revenue in Spice Infotainment (*supra*) on 2 November 2017. The decision in Spice Infotainment has been followed in the case of the respondent while dismissing the Special Leave Petition for AY 2011-2012. In doing so, this Court has relied on the decision in Spice Infotainment (*supra*).

34. We find no reason to take a different view. There is a value which the court must abide by in promoting the interest of certainty in tax litigation. The view which has been taken by this Court in relation to the respondent for AY 2011-12 must, in our view be adopted in respect of the present appeal which relates to AY 2012-13. Not doing so will only result in uncertainty and displacement of settled expectations. There is a significant value which must attach to observing the requirement of consistency and certainty. Individual affairs are conducted and business decisions are made in the expectation of consistency, uniformity and certainty. To detract from those principles is neither expedient nor desirable.

8. It may also be relevant to note that the Supreme Court in the case of *Pr. CIT v. Mahagun Realtors (P.) Ltd.* [2022] 137 taxmann.com 91/287 Taxman 566/443 ITR 194 had considered the decision of the Supreme Court in the case of *Maruti Suzuki (supra)* and it was held as under :

"42. ...whether corporate death of an entity upon amalgamation per se invalidates an assessment order ordinarily cannot be determined on a bare application of section 481 of the Companies Act, 1956 (and its equivalent in the 2013 Act), but would depend on the terms of the amalgamation and the facts of each case.

43. In view of the foregoing discussion and having regard to the facts of this case, this court is of the considered view, that the impugned order of the High Court cannot be sustained; it is set aside."

8.1. Importantly, the decision in *Maruti Suzuki* which was relied upon was distinguished in *Mahagun Realtors (P.) Ltd.*, primarily on the premise that in the case of *Maruti Suzuki* the assessee therein had duly



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informed the authorities about the merger of the company and yet the assessment order was passed in the name of the amalgamated / non existing company. Whereas, in the case of *Mahagun Realtors (P.) Ltd.*, the factum of amalgamation was not brought to the notice of the assessing authority and further the assessment order was made in the name of both the amalgamating company and the resultant company in the case of *Mahagun Realtors (P.) Ltd.* It was thus held the decision in *Maruti Suzuki* was inapplicable to the facts of the case. The relevant portion of the order of the Supreme Court in *Mahagun Realtors (P.) Ltd.*, is extracted below for better appreciation of the above position:

"7. The Revenue, represented by the Additional Solicitor General, Mr. N. Venkataraman, urged that the names of both the amalgamating and amalgamated companies were mentioned in the assessment order. According to him such mistakes, defects or omissions are curable under section 2928 when the assessment is in substance and effect, in conformity with or according to the intent and purpose of the Act.

8. It was contended that the amalgamating or transferor company was duly represented by the amalgamated company and no prejudice was caused to any of the parties by the assessment order. It is further urged by the Revenue that in *Maruti Suzuki*, this court rejected the Revenue's appeal on the ground that the final assessment order referred only to the name of the amalgamating company and there was no mention of the resulting company, whereas in this case, in both the draft and the final assessment orders, the names of both the amalgamating and amalgamated company were mentioned.

9. It was also urged that the facts of the *Maruti Suzuki* are distinguishable from the present case, as in that case the Revenue was duly informed about the merger and change in name of the company, and yet the Assessing Officer passed the order in the name of the transferor or amalgamating[2019] 107 taxmann.com 375/416 ITR 613/265 Taxman 515 (SC); [2019] SCC Online SC 928. company. However, in the present case, the Assessing Officer or even the Revenue was not informed about the amalgamation.

.....

33. ...The respondent has relied upon *Spice* and *Maruti Suzuki* (*supra*) to contend that the notice issued in the name of the amalgamating company is void and illegal. The facts of the present case, however, can be distinguished from the facts in *Spice* and *Maruti Suzuki* on the following bases.



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34. Firstly, in both the relied upon cases, the assessee had duly informed the authorities about the merger of companies and yet the assessment order was passed in the name of the amalgamating/non-existent company. However, in the present case, for the assessment year 2006-07, there was no intimation by the assessee regarding amalgamation of the company. The return of income for the assessment year 2006-07 first filed by the respondent on June 30, 2006 was in the name of MRPL. MRPL amalgamated with MIPL on May 11, 2007, with effect from April 1, 2006. In the present case, the proceedings against MRPL started in August 27, 2008 when search and seizure was first conducted on the Mahagun group of companies. Notices under section 153A and section 143(2) were issued in the name MRPL and the representative from MRPL corresponded with the Department in the name of MRPL. On May 28, 2010, the assessee filed to of cores on the name of MRPL, and in the "business reorganization column of the form mentioned not applicable amalgamation section. Though the respondent contends that they had intimated the authorities by letter dated July 22, 2010, it was for the assessment year 2007 -08 and not for the assessment year 2006-07. For the assessment years 2007-08 to 2008-09, separate proceedings under section 153A were initiated against MIPL and the proceedings against MRPL for these two assessment years were quashed by the Additional Commissioner of Income-tax by order dated November 30, 2010 as the amalgamation was disclosed. In addition, in the present case the assessment order dated August 11, 2011 mentions the name of both the amalgamating (MRPL) and amalgamated (MIPL) companies.

35. Secondly, in the cases relied upon, the amalgamated companies had participated in the proceedings before the Department and the courts held that the participation by the amalgamated company will not be regarded as estoppel. However, in the present case, the participation in proceedings was by MRPL which held out itself as MRPL.

.....

41. In the light of the facts, what is overwhelmingly evident is that the amalgamation was known to the assessee, even at the stage when the search and seizure operations took place, as well as statements were recorded by the Revenue of the directors and managing director of the group. A return was filed, pursuant to notice, which suppressed the fact of amalgamation on the contrary, the return was of MRPL. Though that entity ceased to be in existence, in law, yet, appeals were filed on its behalf before the Commissioner of Income-tax, and a cross-appeal was filed before the Income-tax Appellate Tribunal. Even the affidavit before this court is on behalf of the director of MRPL. Furthermore, the assessment order painstakingly attributes specific amounts surrendered



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by MRPL, and after considering the special auditor's report, brings specific amounts to tax, in the search assessment order. That order is no doubt expressed to be of MRPL (as the assessee) but represented by the transferee, MIPL. All these clearly indicate that the order adopted a particular method of expressing the tax liability. The Assessing Officer, on the other hand, had the option of making a common order, with MIPL as the assessee, but containing separate parts, relating to the different transferor companies (Mahagun Developers Ltd., Mahagun Realtors Pvt. Ltd., Universal Advertising Pvt. Ltd., ADR Home Decor Pvt. Ltd.). The mere choice of the Assessing Officer in issuing a separate order in respect of MRPL, in these circumstances, cannot nullify it. Right from the time it was issued, and at all stages of various proceedings, the parties concerned (i. e., MIPL) treated it to be in respect of the transferee company (MIPL) by virtue of the amalgamation order and section 394(2). Furthermore, it would be anybody's guess, if any refund were due, as to whether MIPL would then say that it is not entitled to it, because the refund order would be issued in favour of a non-existing company (MRPL). Having regard to all these reasons, this court is of the opinion that in the facts of this case, the conduct of the assessee, commencing from the date the search took place, and before all forums, reflects that it consistently held itself out as the assessee. The approach and order of the Assessing Officer is, in this court's opinion in consonance with the decision in *Marshall and Sons (supra)*, which had held that:

"an assessment can always be made and is supposed to be made on the transferee company taking into account the income of both the transferor and transferee company."

8.2. The above extracts would show as stated supra that two facts which weighed with the Supreme Court in case of *Mahagun Realtors (P.) Ltd.*, was that the factum of amalgamation was not brought to the notice of the assessing authority and further the assessment order was made in the name of both the amalgamating company and the resultant company. It was under those circumstances it was held by the Supreme Court in *Mahagun Realtors (P.) Ltd.*, that the impugned order of the High Court holding that the assessments in that case was not a nullity. However, as found supra in the present case the petitioner had on at least 5 occasions intimated the assessing authority as to the factum of amalgamation and requested that the assessment be made in the name of the resultant / amalgamated company and thus the impugned order in the name of the amalgamated / non existent company is non-existent in terms of the decision of the Supreme Court in *Maruti Suzuki* and is thus liable to be set aside.



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9. Yet another submission made by the learned counsel for the respondent was that the petitioner had not deactivated their PAN to justify the assessments being made in the name of the amalgamating company. However, this again does not justify the passing of an assessment order in the name of a company which has got amalgamated and thus non-existent. In this regard reliance was placed on the judgment of the Bombay High Court in the case of *Diversey India Hygiene (P.) Ltd. v. Asstt. CIT*[Writ Petition No. 3034 of 2022, dated 8-11-2023]. The relevant portion is extracted hereunder:

"6. The fact that PAN was not deactivated would not help the Revenue because there could be cases relating to various years when the company was in existence and it is possible those PAN numbers are picked up for scrutiny or for issuance of refund. That in our view, will not be a sanction for Department to issue notices to a non- existing entity, particularly, when they were aware that the entity was not in existence."

10. From the above discussion I am of the view that the case on hand stands covered by the decision of the Supreme Court in the case of *Maruti Suzuki* and thus the impugned order of assessment in the name of the amalgamating company i.e. Pharmazell Vizag Pvt. Ltd. which was not in existence on the date of passing the impugned order cannot be sustained and thus the impugned order is quashed. The respondents are however at liberty to proceed in accordance with law. The writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

28. The reliance placed by the respondent-revenue on the decision of the Supreme Court in the case of *Mahagun Realtors (P) Ltd.* (*supra*) is distinguishable. This decision was rendered on 5 April 2022 and in which the decision of the Supreme Court in the case of *Maruti Suzuki India Ltd.* (*supra*) was also considered. In the case of *Mahagun Realtors (P) Ltd.* (*supra*), after the merger order, return of income was filed in the name of the amalgamating company. In the said return of income, PAN of the amalgamating company was mentioned. In the return of income, the date of incorporation of the amalgamating company was mentioned and in the form of return of income to a specific query 'Business Reorganization (a).(b) In case of amalgamated company, write the name of amalgamating company" the reply mentioned was "NOT APPLICABLE". The appeal before the Tribunal was also filed in the name of amalgamating company. It was on these facts that the Supreme Court observed that since the amalgamating company did not inform the revenue about the amalgamation but held out to the revenue as if the amalgamating company is in existence, the Supreme Court did not accept the submission made by the assessee that the proceedings were taken against the nonexisting company. In the present case before us,



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the respondent-revenue has not pointed out how the facts in the present case are identical to the facts of Mahagun Realtors (P) Ltd. (*supra*) which was the basis of the decision of the Supreme Court. These facts are absent in the present matter before us, but on the contrary the respondent-revenue had knowledge about the amalgamation/ merger as observed by us above and, therefore, the decision of Mahagun Realtors (P) Ltd. (*supra*) is not applicable to the facts before us.

29. We may observe that the Supreme Court in the case of Mahagun Realtors (P) Ltd. (*supra*) gives an indication of dissent from the decision in the case of Maruti Suzuki India Ltd. (*supra*) but after giving such an indication does not dissent from the decision in the case of Maruti Suzuki India Ltd. (*supra*) but on facts distinguishes it to reject the contentions of the assessee therein.

30. We may, however, note that a reading of paragraph Nos.18 to 33 of the Hon'ble Supreme Court in the case of Mahagun Realtors (P) Ltd. (*supra*) does indicate that the Hon'ble Supreme Court in Mahagun Realtors (P) Ltd. (*supra*) did not agree with the proposition that the proceedings taken against the non-existing company would be void. In paragraph 32 of Mahagun Realtors (P) Ltd. (*supra*), it is observed that the legislative change, by way of introduction of Section 2(1A), defining "amalgamation" was not taken into account in the earlier decision of the Hon'ble Supreme Court. Further, tax treatment in the various provisions of the Act was not brought to the notice of this Court in the previous decisions. In paragraph 30 of Mahagun Realtors (P) Ltd. (*supra*), the Hon'ble Supreme Court observed that the combined effect of Section 394(2) of the Companies Act, 1956, Section 2(1A) and various other provisions of the Income-tax Act, 1961 is that unlike a winding up, there is no end to the enterprise, with the entity. The enterprise in the case of amalgamation continues. In paragraph 18 of Mahagun Realtors (P) Ltd. (*supra*), the Hon'ble Supreme Court observed that it is essential to look beyond the mere concept of destruction of corporate entity which brings to an end or terminates any assessment proceedings. The Supreme Court further observed that there are analogies in civil law and procedure where upon amalgamation, the cause of action or the complaint does not per se cease - depending of course, upon the structure and objective of enactment. It is further observed that broadly, the quest of legal systems and courts has been to locate if a successor or representative exists in relation to the particular cause or action, upon whom the assets might have devolved or upon whom the liability in the event it is adjudicated, would fall.

31. In our view after making various observations from paragraphs 18 to 32, the Supreme Court in the case of Mahagun Realtors (P) Ltd. (*supra*) distinguishes the applicability of the decision in the case



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of Maruti Suzuki India Ltd. (*supra*) to the facts before them which we have already observed above. The subsequent decision of the Supreme Court in the case of Mahagun Realtors (P) Ltd. (*supra*) does not dissent from the decision in the case of Maruti Suzuki India Ltd. (*supra*) but the observations made from paragraphs 18 to 32 do give an indication in that direction. However, the decision of various High Courts and the decision of the Supreme Court in the case of Maruti Suzuki India Ltd. (*supra*) holds the field today and therefore we have to consider the effect of the decision in the case of Maruti Suzuki India Ltd. (*supra*) to the facts of the present case.

32. The Supreme Court in the case of Maruti Suzuki India Ltd. (*supra*) in paragraph 19 has adverted to various facts of the assessee before them, which we propose to advert here for deciding whether the case of the appellant falls within the facts of Maruti Suzuki India Ltd. (*supra*).

(i) The income which was sought to be subjected to tax was of the erstwhile entity prior to amalgamation. In the instant case before us also the assessment order by which the demand is raised is in the name of the erstwhile entity.

(ii) Under the scheme of amalgamation, the amalgamated company has assumed the liabilities of the amalgamating company, including tax liabilities. This fact is also present in the case before us.

(iii) The Supreme Court after referring to the decision in the case of Saraswati Industrial Syndicate Ltd. v. Commissioner of Income-tax [1990] 53 Taxman 92/186 ITR 278 (SC) observed that the consequence of the scheme of amalgamation is that the amalgamating company ceased to exist. In the instant case before us also, this would be the consequence insofar as RPEL and RPPL are concerned.

(iv) Upon ceasing to exist, an entity cannot be regarded as a "person" under Section 2(31) of the Act against whom an assessment order can be passed. In the instant case before us also the amalgamating companies are RPEL and RPPL which have ceased to exist on account of amalgamation, but still the assessment order is passed in the names of RPEL and RPPL.

(v) The scheme of amalgamation in the present case before us was approved on 11 January 1995 with effect from 1 January 1995 by the order of this Court and the assessment orders were passed after 1 January 1995.



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(vi) In spite of the Assessing Officer being aware of the fact of amalgamation, the assessment order was passed on an entity which had ceased to exist.

(vii) The assessment orders are passed in the name of RPEL and RPPL only without mentioning anything about RIL. This fact is identical to Maruti Suzuki's case whereas in Mahagun's case, assessment orders contained names of both amalgamating and amalgamated company.

33. In our view, the facts of the present appellant-assessee before us are similar to the significant facts in the case of Maruti Suzuki India Ltd. (*supra*) on the basis of which the Supreme Court has held that in spite of the fact of the Assessing Officer being informed of the amalgamating company having ceased to exist as a result of the scheme of amalgamation, if the proceedings are initiated against the non-existing companies, then such proceedings are void ab initio although the amalgamated company participated in the proceedings. In our view, in the present case also although RIL-amalgamated company participated in the proceedings, the respondent-revenue having knowledge of the amalgamation still passed an order in the name of the amalgamating companies which would make the assessment order dated 27 March 1997 void ab initio.

34. The appellant-assessee is justified in relying on the decisions of the High Courts of Gujarat, Calcutta, Delhi and Madras, which are referred to in the paragraph dealing with the submissions made on behalf of the appellant-assessee. These have considered the decisions in the cases of Maruti Suzuki India Ltd. (*supra*) and Mahagun Realtors Pvt. Ltd. (*supra*), and have come to a conclusion that proceedings against non-existing entities are bad in law. In our view, the reliance placed on these decisions by the appellant-assessee supports the submissions made by them on the proposition that the proceedings against an amalgamating company post the amalgamation orders are void ab initio if the revenue had knowledge of the amalgamation prior to the proceedings.

35. In view of above, assessment orders dated 27 March 1997 passed by the Assessing Officer in the name of RPEL and RPPL is held to be bad in law and quashed and set aside and consequently all the proceedings before the appellate authorities would also stand quashed. In view of above, question of law framed by our order dated 20 January 2025 is answered in favor of the appellant-assessee and against the respondent revenue and the appeals filed by the appellant-assessee for assessment year 1994-95 are allowed."



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12. Following the above decisions (supra), we hold that the notice(s) issued u/s.148 & 143(2) for acquiring jurisdiction to reopen the completed assessment u/s. 143(3) in the name of a non-existing entity, despite the fact that this was time and again intimated to the AO, is held as null in the eyes of law; and consequently, the re-assessment order dated 30.03.2022, which was also framed in the name of non-existent entity, is accordingly quashed. Since we have quashed the impugned order on the aforesaid ground, therefore, the other grounds raised by the assessee have become academic and hence, infructuous.

13. In the result, appeal filed by the assessee is allowed.

Order pronounced on the 29th day of July, 2025, in Chennai.

Sd/-

(जगदीश)
(JAGADISH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(एबी टी. वर्की)
(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 29th July, 2025.

TLN

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF